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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/666,325	09/18/2003	Juan Carlos Coronado	02894-595001 / 06735-PT10	8375
26161	7590	11/30/2006	EXAMINER	
FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			KEASEL, ERIC S	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/666,325	CORONADO ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Eric Keasel	3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on September 18, 2006.  
 2a) This action is FINAL.                  2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-68 is/are pending in the application.  
 4a) Of the above claim(s) 3-5,9-18,21,22,27-33,42,43,47 and 52-68 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,2,6-8,19,20,23-26,34-41,44-46 and 48-51 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 18 September 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Claims 3-5, 9-18, 21, 22, 27-33, 42, 43, 47, and 52-68 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected inventions and/or species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on March 27, 2006.
2. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6, 19, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by DiGirolamo (US Patent Number 4,357,861).

DiGirolamo discloses a beverage mixer and dispenser, comprising: a housing defining a mixing chamber (8) having an upper feed opening (7), the housing including an extract container (4) positioned above the upper opening of the mixing chamber and containing a powdery soluble

drink extract; a metering device (6) positioned between the extract container and mixing chamber to dispense a desired amount of the drink extract from the extract container into the mixing chamber through the upper opening, for mixing with liquid in the mixing chamber to produce a beverage; and the feed opening is exposed at an exterior surface of the housing such that the feed opening is accessible from the outside the beverage mixer and dispenser, the feed opening leading into the mixing chamber, which is capable of meeting the intended use to allow manual addition of drink additives to the mixing chamber.

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 2, 6-8, 19, 20, 23-26, 34-41, 44-46, and 48-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Militello (DE 200 06 115) in view of Ogawa et al. and Swier et al.

Militello discloses an extract container (2) with a metering device (11) leading to a mixing chamber as well as a hot water supply (3) leading to the same mixing chamber. Two rotors both function as mixing and aerating rotors in separate chambers. Militello lacks the separate feed opening for allowing manual additions of drink additives. Ogawa et al. disclose a separate feed opening (33) used in a similar hot beverage mixing device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have used the separate feed opening of Ogawa et al. with the device of Militello in order to add additives to the hot drink mix as taught by Ogawa et al. The modified Militello fails to disclose the lid, the shape of the blades, the rotor actuated from the bottom, the funnel-shaped mixing chamber and the intended use of cream. The examiner took official notice that the lid, the shape of the blades, the rotor actuated from the bottom, the funnel-shaped mixing chamber and the intended use of cream are old and well known in the art. Since applicant did not traverse the official notice, these limitations are considered to be admitted prior art.

***Response to Arguments***

7. Applicant's arguments filed September 18, 2006 have been fully considered but they are not persuasive.

Applicant argues that DiGirolamo does not have a housing. The examiner disagrees. Applicant's claims define the housing as the mixing chamber and extract container (see claim 1).

Since DiGirolamo has a mixing chamber and an extract container, it has the same housing as defined in applicant's claims. The feed opening is as accessible as applicant's is. It appears that applicant is trying to argue limitations from claim 7 into claim 1. Specifically, when applicant's lid is shut, the feed opening is not accessible and when the lid is open, it is accessible. It should be noted that claim 7 is not rejected as being anticipated by DiGirolamo. As depicted, DiGirolamo meets the claim limitations better than applicant's disclosure because DiGirolamo depicts access to the feed opening. Even if one were to read additional structure surrounding what is shown in Fig. 2, the feed opening would be as accessible as applicant's.

Applicant argues that Ogawa teaches away from using a mixing chamber. However, it should be noted that the rejection is not combining the mixing chamber of Ogawa to the device of Militello. The rejection clearly states that the separate feed opening for the extract is being added.

Re claim 23, applicant argues that the two rotors of Militello are used to rinse the sieves and that they neither mix nor aerate. The examiner disagrees. All rotors used in this environment will inherently mix and aerate. If applicant has specific rotor structure which will only mix or only aerate, these features should be identified and recited in the claims.

### *Conclusion*

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication should be directed to Eric Keasel at telephone number (571) 272-4929, who can normally be reached Monday-Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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